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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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09/618,424

7/18/00

TAY A

49979

EXAMINER
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PADMANABHAN, K

ART UNIT	PAPER
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1641

20040721

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

<b>Interview Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/618,424	TAYA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kartic Padmanabhan	1641	

All participants (applicant, applicant's representative, PTO personnel):

(1) Kartic Padmanabhan. (3) \_\_\_\_\_.

(2) Raj Bawa. (4) \_\_\_\_\_.

Date of Interview: 21 July 2004.

Type: a) ☒ Telephonic b) ☐ Video Conference  
c) ☒ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.  
If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: 23 and 24.

Identification of prior art discussed: none.


Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

  
Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

#### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Mr. Bawa called to request a personal interview on the present application. Upon discussing the matter with SPE Long Le, the examiner informed Mr. Bawa that his request was being denied. Mr. Bawa argued that there was only 1 claim still pending (claim 23), and as such, an interview should be granted. However, the number of pending claims is irrelevant to the issue of whether an interview is proper. Whether there be 50 claims or just one, the analysis of whether to grant an interview remains the same. It is noted, however, that Mr. Bawa's position is also contradicted by the record of the present application. Contrary to his assertion that there is only 1 pending claim and claim 24 has been non-elected, both claims 23 and 24 remain pending and rejected, and claim 24 is not non-elected, as asserted. Mr. Bawa then proceeded to claim that as a former examiner, he never denied an interview request, and that the PTO practice of denying interviews is the reason that the PTO has such a bad reputation "on the outside". However, this point is also irrelevant. The examiner is in no way bound by the actions of other examiners, and definitely not by the actions of former examiners. The MPEP makes clear that the granting of an interview after Final Rejection, as in the present instance, is within the discretion of the examiner. The MPEP states that "an interview may be granted if the examiner is convinced that disposal or clarification for appeal may be accomplished with only nominal further consideration." See MPEP 713.09. The examiner is not convinced here based upon several reasons. First, the present case has been interviewed on two prior occasions. The first interview occurred with Christine O'Day via telephone on June 19, 2003, and the application was again interviewed with Mr. Bawa in person on January 6, 2004. Further, in the January '04 interview, claims 23 and 24 were discussed, and Mr. Bawa was advised that claims 16-22 would be allowable if amended, but claims 23 and 24 would not, at which time Mr. Bawa agreed and committed to the cancellation of claims 23 and 24 (See Interview Summary of 1/6/04 signed by Mr. Bawa). Mr. Bawa has reneged on this commitment and seeks to further discuss these claims. Claims 23 and 24 were amended prior to the Final Rejection, and applicant's arguments with respect to those claims were addressed in the Final office action. It is also noted that it is not the examiner's job to make PTO policy decisions or to consider the reputation of the PTO based on present PTO policy and practice, but rather only to examine the applications for which he is responsible. Mr. Bawa also contends that even though two prior interviews have been conducted, since the case has undergone an RCE, the application is, in effect, two cases. This position is unconvincing. The application is still only 1 case, as the same subject matter is still being prosecuted and the same application number has been maintained. Mr. Bawa then claimed that the examiner and the examiner's supervisor promised to call him prior to the issuance of a Final Office action, but neglected to do so, which should also be the basis to grant an interview. It is first noted that the examiner made no such promise, and was never contacted by Mr. Bawa after the interview on January 6, 2004 (until an interview request was made, which is the issue presently under discussion). Even if Mr. Bawa did attempt to call the examiner, no message was ever left. In fact, the examiner has never in his career neglected to do something that he promised applicant or their representatives he would, and Mr. Bawa is invited, even encouraged, to find a single complaint against the examiner. Without such a finding, Mr. Bawa's accusations are totally unfounded and unwarranted. It is true that Mr. Bawa talked to SPE Le after the January interview, at which time Mr. Le indicated to Mr. Bawa that he would try to call before the issuance of a Final action by the examiner; however, this was never communicated to the examiner until the morning of 7/21. Mr. Bawa claimed that since no call was received, he "assumed" that claims 23 and 24 were allowed, and advised his clients of the same. However, based on Mr. Bawa's own contention (which turns out to be inaccurate) that he believed claim 24 to be non-elected, the case could not be allowed without its cancellation. Further, it is the responsibility of applicant's representatives to learn the status of the application before making unwarranted representations to their clients, and it is not the responsibility of the PTO. Although Mr. Le indicated that he would try to call Mr. Bawa, such an agreement was merely a courtesy, and he was in no way required to do so. Mr. Bawa should have made a follow up call to the examiner or Mr. Le prior to telling his clients that the case was allowed. Further, Mr. Bawa claimed that he only learned that the case was under Final Rejection in the past few days; however, the Final Rejection was mailed to Christine O'Day at the law firm of Edwards & Angell in Boston (applicant's attorneys of record) on March 24, 2004, and Mr. Bawa had ample opportunity to learn of the status of the case before incorrectly informing his clients. Failure to make reasonable efforts (even minimal effort would have sufficed in this instance) to learn of the status of the present application prior to informing his clients was a disservice to his clients done by Mr. Bawa, and not the PTO. Mr. Bawa also asserted on several occasions that if the examiner did not grant the interview, he would call the Director of TC 1600 or even Acting Under Secretary of Commerce for IP and Director of the USPTO Jon Dudas. Mr. Bawa also claimed in one instance that he was formerly a supervisor at the PTO (which is without any basis in fact). Both these assertions are viewed as "bad faith" attempts to strong-arm the examiner into acquiescing to Mr. Bawa's requests/demands. Mr. Bawa also used the word "damn" in several instances. Applicants and their representatives are reminded of their obligation to conduct their business with the Patent and Trademark Office with decorum and courtesy. See MPEP 714.25 and 37 CFR 1.3. Although the preceding referenced sections specifically mention written communication, they are interpreted to include oral communication as well, and failure to comply with this obligation in the future may result in notification of this violation to the Director, as well as the Office of Enrollment and Discipline.